

IN THE UNITED STATES DISTRICT COURT  
FOR THE NORTHERN DISTRICT OF CALIFORNIA

JAMES P. MALVEAUX,  
Plaintiff,  
v.

Case No. 17-cv-05004-CW

ORDER GRANTING MOTIONS TO  
DISMISS SECOND AMENDED  
COMPLAINT

WELLS FARGO BANK, N.A.;  
BARRETT DAFFIN FRAPPIER TREDER  
& WEISS, LLP; FIRST AMERICAN  
TITLE COMPANY; BANK OF NEW  
YORK MELLON f/k/a BANK OF NEW  
YORK as Trustee for WORLD  
SAVINGS REMIC TRUST, MORTGAGE  
PASS-THROUGH CERTIFICATES,  
SERIES 19; RALPH PARTNERS II,  
LLC; AND ALL PERSONS KNOWN OR  
UNKNOWN CLAIMING AN INTEREST  
IN THE SUBJECT PROPERTY, and  
DOES 2 through 50, inclusive,  
Defendants.

(Docket Nos. 53, 60, 63, 65,  
71)

Now pending are motions to dismiss the Second Amended  
Complaint (2AC) by Wells Fargo Bank, N.A., formerly known as  
Wachovia Mortgage, FSB and World Savings Bank, FSB (Wells Fargo),  
and the Bank of New York Mellon, formerly known as the Bank of  
New York, Docket Number 53; Barrett Daffin Frappier Treder &  
Weiss, LLP (Barrett Daffin), Docket Number 60; First American  
Title Company (First American), Docket Number 63; Ralph Partners  
II, LLC (Ralph Partners), Docket Number 65; and Billie Malveaux,  
Docket Number 71. For the reasons set forth below, the motions  
are GRANTED.

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BACKGROUND AND PROCEDURAL HISTORY

The 2AC is the third complaint filed in this action by Plaintiff James P. Malveaux, who is represented by counsel. Docket No. 49. On December 28, 2017, the Court granted motions to dismiss the prior iteration of the complaint, the First Amended Complaint (1AC). In that Order, the Court noted that it would "grant[] one further opportunity for Plaintiff to amend his claims," and that "Plaintiff may replead any or all of his dismissed claims if he can truthfully allege, without contradicting the allegations in his previous complaints, facts sufficient to show that he is entitled to relief." Docket No. 36 at 2, 20. Plaintiff filed the 2AC on January 28, 2018. Docket No. 49.

In the 2AC, Plaintiff alleges the following facts. Plaintiff owns a single-family residence (the property) in Pacifica, California. On or about June 16, 2005, Plaintiff and his then-wife, Billie Malveaux, executed an adjustable rate mortgage secured by the property, consisting of a deed of trust, note, and adjustable rate rider. Plaintiff alleges that the loan was a "Pick-a-Payment" loan. 2AC ¶ 8 at 3.<sup>1</sup> The deed of trust identifies World Savings Bank, FSB, as the lender and original servicer and Defendant First American Title Company as the title insurance company.

Defendant Wells Fargo "holds itself out as the current servicer of Plaintiff's mortgage loan." Id. ¶ 2 at 2. Barrett

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<sup>1</sup> The paragraph numbers in the 2AC repeat multiple times; accordingly, both page numbers and paragraph numbers are cited here.

1 Daffin provides legal services and "default and foreclosure  
2 services." Id. ¶ 3 at 2. The Bank of New York Mellon serves as  
3 trustee for the World Savings Remic Trust, Mortgage Pass-Through  
4 Certificates, Series 19. The role of Ralph Partners is not  
5 described in the 2AC, but in the 1AC, Plaintiff alleged that  
6 Ralph Partners had purchased the property in a foreclosure sale.  
7 See 1AC ¶ 79.

8 A notice of default and election to sell under the deed of  
9 trust was recorded on August 22, 2010. A notice of rescission of  
10 this notice of default was recorded on August 8, 2014.

11 On October 29, 2015, a substitution of trustee was recorded,  
12 appointing Barrett Daffin as trustee under the deed of trust.  
13 Plaintiff alleges that this substitution violates the terms of  
14 the deed of trust.

15 A second notice of default and election to sell under the  
16 deed of trust was issued on February 18, 2016, by Barrett Daffin,  
17 and recorded on February 22, 2016. Plaintiff alleges that this  
18 notice was defective due to a July 2005 securitization of his  
19 loan. A notice of trustee's sale was recorded on December 20,  
20 2016.

21 In January 2017, Plaintiff, represented by different  
22 counsel, filed a lawsuit in San Mateo County Superior Court,  
23 challenging Defendants' right to foreclose. Malveaux v. Wells  
24 Fargo Bank, N.A., San Mateo Superior Court No. 17-civ-00328. On  
25 January 25, 2017, the state court denied Plaintiff's petition for  
26 a temporary restraining order (TRO) enjoining foreclosure.  
27 Defendants filed a demurrer to the complaint, which the state  
28 court sustained at a hearing on April 25, 2017, followed by a

1 written order filed May 11, 2017. The state court granted  
2 Plaintiff leave to amend, but Plaintiff did not timely amend his  
3 complaint and, on June 14, 2017, voluntarily dismissed the action  
4 without prejudice. Plaintiff alleges that he did so because a  
5 Wells Fargo representative informed him that the bank would allow  
6 him to sell his home through his realtor or give him a loan  
7 modification only if he dismissed his state court lawsuit. Id.  
8 ¶¶ 74 at 21, 130 at 34.

9 Plaintiff alleges that he began submitting the requested  
10 documents for a loan-modification application around the time  
11 that he voluntarily dismissed his state court lawsuit. On July  
12 3, 2017, a representative of Wells Fargo spoke with Plaintiff and  
13 indicated that Plaintiff's loan-modification application was  
14 missing three documents. Id. ¶ 78 at 22. Plaintiff submitted  
15 the documents. Id. ¶ 80 at 22. Weeks later, in August 2017, a  
16 different Wells Fargo representative asked Plaintiff to have his  
17 ex-wife "sign over the deed for the property to Plaintiff." Id.  
18 ¶ 86 at 22. Plaintiff alleges that this prevented him from  
19 submitting the documents required for the loan modification. Id.  
20 ¶ 129 at 30 (alleging that his application was "complete but for  
21 the note"); id. ¶ 86-87 at 22 (alleging that Wells Fargo asked  
22 Plaintiff to have his ex-wife "sign over the deed for the  
23 property to Plaintiff," which "prevented" him "from submitting  
24 the 'required' documents"); id. ¶ 140 at 36 (alleging the Billie  
25 Malveaux "interfered with Plaintiff's ability to successfully  
26 complete the loan modification process"). On August 25, 2017,  
27 "Defendant" emailed Plaintiff indicating that "they were not  
28 going to proceed with the loan modification process." Id. ¶ 93

1 at 23.

2 On August 29, 2017, Plaintiff filed this action and a motion  
3 for a TRO enjoining a foreclosure of the property scheduled for  
4 August 30, 2017. On the same day, this Court denied the motion  
5 for a TRO because Plaintiff had neither notified Defendants of  
6 the motion nor shown why he should be excused from doing so. On  
7 September 30, 2017, Plaintiff recorded with the San Mateo  
8 Assessor-County Clerk-Recorder a notice of the pendency of this  
9 action, and brought a copy of that notice to the place where the  
10 foreclosure sale was being held. Id. ¶¶ 96-97 at 23. The person  
11 conducting the sale took a picture of it with his cell phone.  
12 The property was sold in a foreclosure. Id. ¶ 121 at 27.

13 In the 2AC, Plaintiff asserts claims for: (1) wrongful  
14 foreclosure; (2) quiet title; (3) unjust enrichment;  
15 (4) violation of California Civil Code section 2923;  
16 (5) violation of California Civil Code section 2924;  
17 (6) violation of California's Unfair Competition Law (UCL), Civil  
18 Code section 17200; (7) accounting and verification of the  
19 alleged debt; (8) bank fraud under 18 U.S.C. § 1344; (9) fraud in  
20 the inducement; (10) promissory estoppel; (11) slander of title;  
21 (12) violation of "the Federal Consumer Protection Bureau Rules";  
22 (13) tortious interference with a contract.<sup>2</sup>

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27 <sup>2</sup> These claims also were asserted in the 1AC, and in the same  
28 order as they are asserted in the 2AC, with the exception of  
Claim 13 for tortious interference with a contract, which is a  
new claim that was not asserted in the 1AC.

Plaintiff asserts these claims against Defendants<sup>3</sup> (1) Wells Fargo; (2) Barrett Daffin; (3) First American; (4) Bank Of New York As Trustee For World Savings Remic Trust, Mortgage Pass-Through Certificates, Series 19; (5) Ralph Partners; and (7) Billie Malveaux.<sup>4</sup>

#### LEGAL STANDARD

A complaint must contain a "short and plain statement of the claim showing that the pleader is entitled to relief." Fed. R. Civ. P. 8(a). The plaintiff must proffer "enough facts to state a claim to relief that is plausible on its face." Ashcroft v. Iqbal, 556 U.S. 662, 678 (2009) (quoting Bell Atl. Corp. v. Twombly, 550 U.S. 544, 570 (2007)). On a motion under Rule 12(b)(6) for failure to state a claim, dismissal is appropriate only when the complaint does not give the defendant fair notice of a legally cognizable claim and the grounds on which it rests. Twombly, 550 U.S. at 555. A claim is facially plausible "when the plaintiff pleads factual content that allows the court to draw the reasonable inference that the defendant is liable for the misconduct alleged." Iqbal, 556 U.S. at 678.

In considering whether the complaint is sufficient to state

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<sup>3</sup> The 2AC contains allegations that refer to entities that are neither listed as defendants in the "Named Parties" section of the 2AC nor otherwise discussed in the remainder of the 2AC or its exhibits; the references to these entities appear to have been erroneously copied from another case. See, e.g., 2AC ¶ 132 at 30 (referring to "MERS," "SLS," "MLF" and "HSBC").

<sup>4</sup> The Court noted in its order dismissing the 1AC that in any amended complaint "Plaintiff must either include Ms. Malveaux as a party or allege facts showing why judgment rendered in her absence would be adequate or why Rule 19 is inapplicable for other reasons." Docket No. 36 at 18. In the 2AC, Plaintiff named Billie Malveaux as a Defendant, and she has appeared in the action. See Docket Nos. 68, 71.

1 a claim, the court will take all material allegations as true and  
2 construe them in the light most favorable to the plaintiff.  
3 Metzler Inv. GMBH v. Corinthian Colleges, Inc., 540 F.3d 1049,  
4 1061 (9th Cir. 2008). The court's review is limited to the face  
5 of the complaint, materials incorporated into the complaint by  
6 reference, and facts of which the court may take judicial notice.  
7 Id. at 1061. However, the court need not accept legal  
8 conclusions, including threadbare "recitals of the elements of a  
9 cause of action, supported by mere conclusory statements."  
10 Iqbal, 556 U.S. at 678 (citing Twombly, 550 U.S. at 555).

11 Rule 9(b) provides that in "alleging fraud or mistake, a  
12 party must state with particularity the circumstances  
13 constituting fraud or mistake." Fed. R. Civ. P. 9(b). "It is  
14 well-settled that the Federal Rules of Civil Procedure apply in  
15 federal court, 'irrespective of the source of the subject matter  
16 jurisdiction, and irrespective of whether the substantive law at  
17 issue is state or federal.'" Kearns v. Ford Motor Co., 567 F.3d  
18 1120, 1125 (9th Cir. 2009) (quoting Vess v. Ciba-Geigy Corp. USA,  
19 317 F.3d 1097, 1102 (9th Cir. 2003). The allegations must be  
20 "specific enough to give defendants notice of the particular  
21 misconduct which is alleged to constitute the fraud charged so  
22 that they can defend against the charge and not just deny that  
23 they have done anything wrong." Semegen v. Weidner, 780 F.2d  
24 727, 731 (9th Cir. 1985).

25 When granting a motion to dismiss, the court is generally  
26 required to grant the plaintiff leave to amend, even if no  
27 request to amend the pleading was made, unless amendment would be  
28 futile. Cook, Perkiss & Liehe, Inc. v. N. Cal. Collection Serv.

Inc., 911 F.2d 242, 246-47 (9th Cir. 1990). In determining whether amendment would be futile, the court examines whether the complaint could be amended to cure the defect requiring dismissal "without contradicting any of the allegations of [the] original complaint." Reddy v. Litton Indus., Inc., 912 F.2d 291, 296 (9th Cir. 1990). The court's discretion to deny leave to amend is "particularly broad" where the court has previously granted leave. Chodos v. West Publ'g Co., 292 F.3d 992, 1003 (9th Cir. 2002).

#### DISCUSSION

##### I. Loan Securitization and Chain of Title

In its Order of December 28, 2017, the Court dismissed most of Plaintiff's claims on the ground that "Plaintiff has failed to allege any defect in the chain of title, or securitization, of his loan." Docket No. 36 at 8. The Court found that judicially noticeable documents demonstrate that, due to the name change of World Savings to Wachovia Mortgage, FSB, and Wachovia's subsequent merger into Wells Fargo, Wells Fargo is the successor-in-interest to World Savings. See id. at 9 (citing Def.'s RJN Exs. A-E). The Court also recognized that other courts have routinely rejected the same theory that Plaintiff has advanced here, namely that Plaintiff's original lender, World Savings Bank, transferred or "securitized" his loan in July 2005 and failed to transfer the chain of title to Wells Fargo, thereby depriving Wells Fargo of the right to enforce the loan contract and to initiate a non-judicial foreclosure. Id. at 8-10. These courts have found that Wells Fargo is the successor-in-interest to World Savings and have upheld the validity of transfers like



the one at issue here on that basis. See, e.g., Wolf v. Wells Fargo Bank, N.A., No. 11-cv-01337-WHA, 2011 U.S. Dist. LEXIS 117835, \*3 (N.D. Cal. Oct. 12, 2011) ("World Savings changed its name to Wachovia Mortgage in late 2007. Wachovia Mortgage then became part of Wells Fargo Bank in 2009 and is the current holder of the note."); Nguyen v. Wells Fargo Bank, N.A., 749 F. Supp. 2d 1022, 1024-1025 (N.D. Cal. 2010) ("[J]udicially noticeable documents reveal that the original lender, World Savings Bank, FSB, simply changed its name to Wachovia Mortgage, FSB, and is now a division of Wells Fargo Bank, N.A., so transfers among those entities were proper"); see also Kalnoki v. First American Trustee Servicing Solutions, LLC, 8 Cal. App. 5th 23, 41-44 (2017) (holding that even assuming the truth of similar securitization allegations, they would be insufficient to set aside foreclosure); Roque v. Suntrust Mortg., Inc., No. C-09-00040 RMW, 2010 WL 546896, at \*3 (N.D. Cal. Feb. 10, 2010) ("Uniformly among courts, production of the note is not required to proceed in foreclosure and similarly no production of any chain of ownership is required.").

The claims that the Court dismissed on December 28 because they were predicated on this chain-of-title or securitization theory were the entirety of Claims 1, 2, 3 and 11, and Claims 4, 6, 7, 8, 10 and 12 to the extent they relied on that theory. The Court granted Plaintiff leave to amend these claims but noted that, in any amended complaint, Plaintiff "must allege facts plausibly supporting each claim and set forth a viable legal theory." Docket No. 36 at 10.

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In the 2AC, the vast majority of the claims continue to be predicated on the same securitization or chain-of-title theory that the Court previously rejected. See 2AC ¶ 15 ("Simply stated, there is no successor---lender [sic] to WORLD SAVINGS in the mortgage loan."); id. ¶ 43 (alleging that "the chain of title was irreversibly broken to the Subject Property with the lender's successor and assign (the true identity of the present beneficiary) unassigned, undocumented and unknown to date. In other words, there is no lender's successor and assign to WORLD SAVINGS in the mortgage loan"); Pl.'s Response to MTD, Docket No. 56 at 10 ("Plaintiff's argument is that defendant are NOT the lawful beneficiary of the note and lacks the authority to foreclose."). The few new allegations that the 2AC contains cannot save Plaintiff's claims from dismissal because such allegations are intended to support the same previously rejected chain-of-title or securitization theory. See 2AC ¶ 11 (alleging that a securitization audit showed that the loan at issue was "securitized" into the World Savings Remic Mortgage Pass-Through REMIC certificates Series 19 within one month after it was signed in 2005).<sup>5</sup>

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<sup>5</sup> Plaintiff alleges in passing based on the alleged securitization audit that "Wells is attempting to collect on an asset it does not own and which was already paid off." 2AC ¶ 13 at 4. It is not clear whether Plaintiff is alleging that the foreclosure at issue in this case was improper because the loan at issue had been "paid off" prior to the foreclosure; it appears that the reference to the loan being "paid off" is related instead to the notion that payments were made from one entity to another during the alleged securitization process. See id. 56 at 16 ("Lender WORLD SAVINGS extinguished its ownership right and beneficial interest in the Note and DOT after the balance of the mortgage loan was paid in full in the securitization transaction

Because (1) judicially noticeable documents demonstrate that due to the name change of World Savings to Wachovia Mortgage, and Wachovia's subsequent merger into Wells Fargo, Wells Fargo is indeed the successor-in-interest to World Savings, Defs.' RJN Ex. A-E, and (2) courts routinely hold that this corporate transaction does not constitute a defect in the chain of title, the claims that are predicated on this theory—namely, the entirety of Claims 1,<sup>6</sup> 2, 3 and 11<sup>7</sup> and Claims 4, 6, 7, 8, 10 and 12 to the extent they are based on this theory—are DISMISSED.

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on or before the closing date of the securitization trust"). In his opposition to the pending motions to dismiss, Plaintiff does not rely on the claim that his loan had been paid off prior to the foreclosure. But even if Plaintiff were predicated his claims on that theory, a bare allegation that his loan was "paid off" would be insufficient to save his claims from dismissal under Iqbal because many other allegations in the 2AC, particularly those pertaining to his efforts to obtain a loan modification, contradict the notion that the loan at issue had been satisfied (i.e., no loan modification would be necessary if the loan at issue had been paid off). Accordingly, based on the totality of the 2AC and its exhibits, the Court cannot draw the reasonable inference that the loan at issue had been "paid off" and that Defendants can be liable for wrongful foreclosure and related claims on that basis.

<sup>6</sup> Plaintiff's wrongful foreclosure claim also suffers from additional defects, including the fact that he agreed when he signed the trust deed that the lender could at any time appoint a successor trustee. See 2AC Ex. A at § 27; see also id. §§ 1(C) & 1(H) (specifying that successors and/or assignees of World Savings Bank would become lenders and beneficiaries under the deed of trust). See Hammons v. Wells Fargo Bank, N.A., 2015 U.S. Dist. LEXIS 169616, \*16-17 (N.D. Cal. 2015) (holding that because "Wells Fargo is the successor-in-interest to World Savings," Wells Fargo has the "contractual right to enforce the note and deed of trust").

<sup>7</sup> Plaintiff's slander of title claim also suffers from additional defects, including that he fails to plead any facts showing that Defendants acted without privilege or justification. See Stowers v. Wells Fargo Bank, N.A., No. 13-cv-05426-RS, 2014 WL 1245070, \*7 (N.D. Cal. Mar. 25, 2014).

1 The dismissal of these claims is WITH PREJUDICE given that  
2 Plaintiff previously was granted leave to amend them.

3 II. Homeowner Bill of Rights

4 Plaintiff's fourth and fifth claims seek relief under  
5 California's Homeowner Bill of Rights (HBOR), Cal. Civil Code  
6 §§ 2923.55 and 2924.

7 The Court previously dismissed these claims with leave to  
8 amend on the ground that (1) they were predicated on the same  
9 chain-of-title or securitization theory discussed above; (2) that  
10 Plaintiff's claim that Defendants violated HBOR's prohibition on  
11 "dual-tracking"—the practice of a mortgage servicer continuing  
12 to pursue foreclosure of a property while a complete loan-  
13 modification application is pending—failed because Plaintiff did  
14 not allege that he had submitted a complete loan-modification  
15 application; and (3) that Plaintiff's claim that Defendants did  
16 not provide him with information in writing in violation of  
17 Section 2923.55(b)(1) failed because Plaintiff did "not adequately  
18 allege what information he requested and when, or what, if any,  
19 response he received from Defendants," or "facts supporting a claim  
20 that Defendants' contacts with him prior to foreclosure were  
21 insufficient under section 2923.55(a)." See Docket No. 36 at 11-13.

22 Plaintiff's HBOR claims in the 2AC continue to fail to state  
23 a claim for relief.

24 First, the HBOR claims in the 2AC are based at least in part  
25 on the chain-of-title or securitization theory that the Court has  
26 rejected, as discussed above.

27 Second, Plaintiff's claim that Defendants violated the  
28 HBOR's prohibition on "dual-tracking" fails on the ground that

Plaintiff admits in the 2AC that his loan-modification application was never completed because he was unable to submit the required documents as a result of non-cooperation by his ex-wife. 2AC ¶ 129 at 30 (alleging that his application was "complete but for the note"); id. ¶¶ 86-87 at 22 (alleging that Wells Fargo asked Plaintiff to have his ex-wife "sign over the deed for the property to Plaintiff," which "prevented" him "from submitting the 'required' documents"); id. ¶ 140 at 36 (alleging that Billie Malveaux "interfered with Plaintiff's ability to successfully complete the loan modification process"). In the absence of allegations that the loan-modification application in question was complete at the time of the foreclosure, Plaintiff's "dual-tracking" claim under section 2923.6(c) fails.<sup>8</sup> See Cal. Civ. Code § 2923.6(c)(providing protections for a borrower who "submits a complete application for a first lien loan modification"); Mace v. Ocwen Loan Servicing, LLC, 252 F. Supp. 3d 941, 946 (N.D. Cal. 2017) (holding that a loan-modification application is "complete" for the purpose of triggering the protections of HBOR if a plaintiff has timely provided all documents that a lender has required in advance for the submission of a loan-modification application); Cal. Civ. Code § 2923.6(h) (same).

Third, Plaintiff's claim that Defendants did not provide him with information in writing upon his request, in violation of

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<sup>8</sup> The same failure to allege completeness requires dismissal of Plaintiff's claim that Defendants only notified him of the denial of his loan-modification application by email, not in a compliant written denial under section 2923.6(c)(1)-(3). See 2AC ¶¶ 93-94 at 23.

1 section 2923.55(b)(1), also is insufficiently pleaded, because,  
2 once again, Plaintiff does not adequately allege what information  
3 he requested and when, or what, if any, response he received from  
4 Defendants. Likewise, he once again does not allege facts  
5 supporting a claim that Defendants' contacts with him prior to  
6 foreclosure were insufficient under section 2923.55(a) despite  
7 the declaration of compliance attached to the recorded notice of  
8 default. See 2AC Ex. E. at 4. The Court does not assume the  
9 truth of the declaration of compliance, but Plaintiff must allege  
10 facts giving rise to a claim that the declaration of compliance  
11 is inaccurate, not merely a conclusory allegation of the legal  
12 standard. Iqbal, 556 U.S. at 678; see also Kamp v. Aurora Loan  
13 Services, 2009 U.S. Dist. LEXIS 95245, \*6-7 (C.D. Cal. 2009)  
14 (holding that plaintiffs' "conclusory assertions are contradicted  
15 by the notice of default" that included the HBOR declaration of  
16 compliance).

17 Finally, Plaintiff alleges that he was "prejudiced" by Wells  
18 Fargo's failure to assign a "single point of contact" to his  
19 loan-modification application. 2AC ¶ 129 at 29-30. It appears  
20 that Plaintiff does not intend to seek relief under HBOR based on  
21 this theory, as he does not even mention it in his opposition.  
22 See generally Docket No. 56. As Defendants point out, this  
23 theory fails in any event because California Civil Code section  
24 2923.7(e) provides that "[f]or purpose of this section, 'single  
25 point of contact' means an individual or team of personnel each  
26 of whom has the ability and authority to perform the  
27 responsibilities described in [Civil Code §§] (b) to (d),  
28 inclusive." (emphasis added). Here, Plaintiff alleges that

1 several Wells Fargo representatives (as opposed to a single Wells  
2 Fargo representative) served as his point of contact in  
3 connection with the loan-modification application at issue. See  
4 2AC ¶¶ 78-87 at 22. Such allegations do not raise the reasonable  
5 inference that Wells Fargo violated section 2923.7 because that  
6 statute expressly permits a "team of personnel" to serve as the  
7 point of contact.

8 Accordingly, because Plaintiff previously was granted leave  
9 to amend his HBOR claims, and because his claims continue to fail  
10 to state a claim for relief under HBOR, the fourth and fifth  
11 claims in the 2AC are DISMISSED WITH PREJUDICE.

12 III. Unfair Competition Law

13 In its order of December 28, 2017, the Court dismissed with  
14 leave to amend Plaintiff's sixth claim under the UCL on the  
15 grounds that it was derivative of Plaintiff's HBOR and wrongful  
16 foreclosure claims, and that Plaintiff had failed to adequately  
17 allege that he lost money or property as a result of Defendants'  
18 actions (i.e., he failed to show the causation and injury  
19 required by the UCL). Docket No. 36 at 13-14.

20 Defendants once again move to dismiss this claim on the  
21 basis that it is entirely derivative of Plaintiff's other  
22 defective claims. In his opposition, Plaintiff concedes that  
23 this is the case; he argues that his UCL claim is based on the  
24 same allegations that formed the predicate for his HBOR and  
25 wrongful foreclosure claims. See Docket No. 56 at 16. Because  
26 the Court has dismissed Plaintiff's HBOR and wrongful foreclosure  
27 claims, and because Plaintiff previously was granted leave to  
28 amend his sixth claim but has failed to allege any facts in the

2AC to support a viable claim under the UCL,<sup>9</sup> the Court DISMISSES the sixth claim WITH PREJUDICE.

#### IV. Accounting

In its Order of December 28, 2017, the Court dismissed with leave to amend Plaintiff's seventh claim for an accounting, and it noted that, in any amended complaint, "among the other elements that Plaintiff must plead in support of any amended claim for an accounting, he must plead facts giving rise to a plausible claim that Defendants have not already provided him with the information that he seeks, or that he does not already have ready access to the information" in connection with any amounts that Defendants may owe him based on the sale of the property. Docket No. 36 at 14-15.

Defendants move to dismiss this claim on the ground that Plaintiff cannot plead the necessary relationship between the parties, and does not plead that any Defendant owes Plaintiff a definite sum of money. In his opposition, Plaintiff offers the same response he previously offered, namely that Defendants owe him a sum of money represented by the value of his home over and above the amount that he owed Defendants when the home was sold. Docket No. 56 at 17. He also repeats the same arguments he made in support of his wrongful foreclosure claims, namely that Defendants "must prove that the amount claimed in the Notice of

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<sup>9</sup> In the 2AC, Plaintiff continues to fail to allege, among other required elements, that he lost money or property as a result of Defendants' actions. Bus. & Prof. Code § 17204; Daro v. Superior Court, 151 Cal. App. 4th 1079, 1098 (2007) ("[A] private person has standing to sue under the UCL only if that person has suffered injury and lost money or property 'as a result of such unfair competition.'").



1 Default is not only a valid debt, but they are the beneficiaries  
2 of the original lender entitled to enforce the note and deed of  
3 trust." Id. In the 2AC, Plaintiff fails to allege any facts to  
4 support the elements for an accounting claim that the Court  
5 discussed in its Order of December 28, specifically, facts  
6 showing that Defendants have not already provided him with the  
7 information that he seeks, or that he does not already have ready  
8 access to information in connection with any amounts that  
9 Defendants may owe him based on the sale of the property.

10 Because the Court previously granted Plaintiff leave to  
11 amend this claim but he has failed to allege any facts in the 2AC  
12 to support a viable claim for an accounting, the Court DISMISSES  
13 the seventh claim WITH PREJUDICE.

14 V. Fraud

15 Plaintiff's eighth, ninth, and tenth claims allege, under  
16 various legal theories, that Defendants defrauded him by offering  
17 him a loan modification to induce him to dismiss his state court  
18 lawsuit, and then recanting the offer and foreclosing on the  
19 property without adequate notice after he dismissed his state  
20 court lawsuit in reliance. The Court previously dismissed these  
21 claims on the ground that Plaintiff's allegations did not support  
22 the theory that Defendants breached an agreement to give  
23 Plaintiff a loan modification; Plaintiff did not plead (1) any  
24 misrepresentation by Defendants, (2) a failure by Defendants to  
25 consider him for a loan modification after he dropped his state  
26 court lawsuit, or (3) a promise of a loan modification if he  
27 dropped his lawsuit in state court. Docket No. 36 at 15-16. The  
28 Court noted that Plaintiff's allegations in the 1AC showed that

1 Wells Fargo offered to "consider him" for a loan modification if  
2 he qualified for one. Id. The Court also noted that Plaintiff's  
3 allegations failed to meet the requirements of Federal Rule of  
4 Civil Procedure 9, and that in any amended complaint, Plaintiff  
5 would need to plead facts alleging each element of each claim,  
6 including the "'who, what, when, where, and how' of the  
7 misconduct charged," as well as statements that Defendants made  
8 to him and the actions that they took that made those statements  
9 misleading or fraudulent. Id. at 16.

10 Defendants move to dismiss these claims on the ground that  
11 the claims continue to suffer from the same defects that the  
12 Court previously recognized. In his opposition, Plaintiff  
13 repeats the same arguments he made in connection with his "dual-  
14 tracking" HBOR claims.

15 The Court finds that the claims at issue are once again  
16 subject to dismissal. In the 2AC, Plaintiff repeated the same  
17 allegations that supported his fraud claims in the prior  
18 iteration of the complaint without adding any new allegations  
19 that would suggest a misrepresentation by any Defendant in  
20 connection with the loan modification, or a failure by Wells  
21 Fargo to consider him for a loan modification. Additionally,  
22 Plaintiff concedes in the 2AC his failure to submit all documents  
23 required for the loan modification, albeit due to his ex-wife's  
24 failure to cooperate, as discussed above. See 2AC ¶¶ 129 at 30,  
25 86-87 at 22, 140 at 36. Accordingly, the Court cannot reasonably  
26 infer that Plaintiff's failure to obtain the loan modification  
27 was the result of fraud, misrepresentations, or the breach of any  
28 agreement involving Defendants.

1 Plaintiff's tenth claim for promissory estoppel is subject  
2 to dismissal for the additional reason that it is barred by the  
3 statute of frauds, which provides that any agreement "for the  
4 sale of real property, or of an interest therein," is invalid  
5 unless it is "in writing and subscribed by the party to be  
6 charged or by the party's agent." Cal. Civil Code § 1624(a),  
7 (a)(3). A mortgage is subject to the statute of frauds. Cal.  
8 Civil Code § 2922. The Court previously dismissed this claim  
9 with leave to amend, noting that, in any amended complaint,  
10 Plaintiff would need to allege facts supporting the existence of  
11 a settlement agreement or other writing that would satisfy the  
12 statute of frauds. Plaintiff did not plead any such allegations  
13 in the 2AC. And, in his opposition to Defendants' motions to  
14 dismiss this claim, Plaintiff merely repeats the same arguments  
15 he made in support of his wrongful foreclosure claims.

16 Because the Court previously granted Plaintiff leave to  
17 amend his eighth, ninth, and tenth claims, and because the claims  
18 as alleged in the 2AC continue to fail to state a claim for  
19 relief, the Court DISMISSES these claims WITH PREJUDICE.

20 VI. Violation of Federal Consumer Protection Bureau Rules

21 Plaintiff alleges that "Defendant Wells Fargo violated each  
22 the [sic] rules of the Federal Consumer Protection Bureau that  
23 are commensurate and correspond to those of the California  
24 homeowners bill of rightsst [sic]." 2AC ¶ 139 at 36. The Court  
25 previously dismissed this claim on the ground that it was  
26 derivative of Plaintiff's HBOR claims and because Plaintiff  
27 failed to address it in his opposition to prior motions to  
28 dismiss. See Docket No. 36 at 17.

1 Defendants once again move to dismiss this claim on the  
2 ground that it is derivative of Plaintiff's HBOR claims. In his  
3 opposition, Plaintiff essentially concedes the derivative nature  
4 of this claim. See Pl.'s Opp'n at 20 (pointing to "Argument for  
5 Claim Under Civil Code Section 2923.55 Survives Dismissal  
6 hereinabove" under section regarding "Consumer Protection Bureau  
7 Rules" and providing no other argument in support of claim at  
8 issue).

9 Because the Court previously granted Plaintiff leave to  
10 amend this claim; because the 2AC does not contain any new  
11 allegations that would entitle Plaintiff to relief; and because  
12 this claim is derivative of Plaintiff's HBOR claims, which the  
13 Court has dismissed, the Court DISMISSES the twelfth claim WITH  
14 PREJUDICE.

15 VII. Tortious Interference with Contract

16 Plaintiff alleges that Billie Malveaux, his ex-wife,  
17 "interfered" with his ability to successfully complete the loan-  
18 modification process "by failure to calling Wells Fargo and  
19 altering information. In their files [sic]." 2AC ¶ 140 at 36.  
20 Plaintiff also alleges that "Wells cooperated with Defendant  
21 Malveaux in the tortious interference with both the real estate  
22 contract and the loan modification process," and that "Defendant  
23 violated several consumer protection laws." Id. ¶¶ 141-42 at 36-  
24 37. This claim appears to be asserted against Defendants Wells  
25 Fargo and Billie Malveaux only.

26 Wells Fargo moves to dismiss this claim on the ground that  
27 no contract between it and Plaintiff is adequately alleged with  
28 respect to a loan modification, that a claim predicated on any

1 such contract is barred by the statute of frauds, and that, even  
2 if Plaintiff had sufficiently alleged a contract with Wells  
3 Fargo, any claim for tortious interference with that contract by  
4 Wells Fargo would fail as a matter of law because a claim for  
5 interference with a contract cannot lie against a party to the  
6 contract.

7 Billie Malveaux also moves to dismiss this claim. In her  
8 motion, she states that the 2AC is "frivolous," that she did not  
9 interfere with Plaintiff's attempts at loan modification, and  
10 that there is "no factual basis to support collusion with Wells  
11 Fargo in this lawsuit." Docket No. 71 at 2.

12 In his opposition, Plaintiff's only statement as to this  
13 claim is that unspecified Defendants "are the beneficiaries of  
14 the original lender for the reasons plead succinctly." Docket  
15 No. 56 at 20.

16 The Court finds that the claim as to Wells Fargo is subject  
17 to dismissal. The claim appears to be predicated on the notion  
18 that an agreement between Plaintiff and Wells Fargo existed  
19 regarding a loan modification. As discussed above in connection  
20 with claims eight, nine, and ten, Plaintiff has failed to  
21 sufficiently allege in two separate iterations of the complaint  
22 that an agreement existed between himself and Wells Fargo  
23 pursuant to which Wells Fargo agreed to provide Plaintiff with a  
24 loan modification. But even if such an agreement had been  
25 adequately alleged, a claim against Wells Fargo for tortious  
26 interference with a contract would fail as a matter of law to the  
27 extent that Wells Fargo is alleged to be a party to the contract.  
28 See Applied Equip. Corp. v. Litton Saudi Arabia Ltd., 7 Cal. 4th

503, 514 (1994) ("[T]he tort cause of action for interference with a contract does not lie against a party to the contract."). Accordingly, this claim is DISMISSED WITH PREJUDICE as to Wells Fargo.

Because the Court has dismissed with prejudice all claims over which it has original jurisdiction, the Court declines to exercise supplemental jurisdiction over the remaining state-law claim against Billie Malveaux<sup>10</sup> for tortious interference with the performance of a contract. See 28 U.S.C. § 1367(c); Perez v. Wells Fargo Bank, N.A., 929 F. Supp. 2d 988, 1001 (N.D. Cal. 2013) (holding that, after dismissing claims over which it has original jurisdiction, "the district court has discretion to decline to exercise its supplemental jurisdiction and to remand the remaining state law claims to state court."). This claim, therefore, is DISMISSED WITHOUT PREJUDICE. Plaintiff may re-file the claim in state court.

#### CONCLUSION

The Court DISMISSES WITHOUT PREJUDICE the claim against Billie Malveaux for tortious interference with the performance of a contract. Plaintiff may re-file that claim in state court.

The Court DISMISSES all other claims in the 2AC WITH PREJUDICE. The Clerk shall close the file.

IT IS SO ORDERED.

Dated: October 2, 2018

  
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CLAUDIA WILKEN  
United States District Judge

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<sup>10</sup> Billie Malveaux appears to be a citizen of California based on her filings in this action, as well as the 2AC and its exhibits.